

CRIMINAL NO. 1:01CR52-11

DOYLE RAY MORGAN

ORDER

Defendant was convicted of conspiracy to possess with intent to distribute cocaine and methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 851. **Judgment in a Criminal Case, filed March 11, 2003, at 1.** He received an active sentence of 360 months imprisonment, to be followed by eight years of supervised release. ***Id.* at 2, 3.** The United States Court of Appeals for the Fourth Circuit affirmed the judgment on December 3, 2003. ***United States v. Morgan*, 81 F. App'x 786 (4th Cir. 2003).**

Defendant previously filed a motion challenging his sentence pursuant to 28 U.S.C. § 2255. **Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed November 19, 2004.** This Court denied the motion. **Memorandum and Order, filed September 19, 2006.** The Judgment cautioned Defendant that “no future motion pursuant to 28 U.S.C. § 2255 may be filed absent permission from the United States Fourth Circuit Court of Appeals.” **Judgment, filed September 19, 2006, at 1.** Defendant appealed to the Fourth Circuit, which affirmed this Court’s denial of his § 2255 motion. ***United States v. Morgan*, 222 F. App’x 295 (4th Cir. 2007).**

Now, Defendant claims relief in the form of a “writ of coram nobis to correct error,” citing 28 U.S.C. § 1651(a), which authorizes writs generally, and 18 U.S.C. § 3553(a), which lists factors to be considered in imposing a sentence. A writ of *coram nobis* (literally, “before us”), is an archaic remedy “directed to a court for review of its own judgment and predicated on alleged errors of fact.” **Black’s Law Dictionary 362 (8th ed. 2004).** Use of this writ has been discontinued in the federal court system. Indeed, Federal Rule of Civil Procedure 60 specifically states: “The following are

abolished: bills of review, bills in the nature of bills of review, and *writs of coram nobis*, *coram vobis*, and *audita querela*.” **Fed. R. Civ. P. 60(e) (emphasis added); see also *United States v. Beggerly*, 524 U.S. 38, 45 (1998) (explaining that Rule 60 abolishes “nearly all the old forms of obtaining relief from a judgment”).**

Furthermore, because Defendant is in federal custody and has already filed an unsuccessful § 2255 motion, the gate-keeping provisions of 28 U.S.C. §§ 2244 and 2255 act to prevent Defendant from obtaining further review of his sentence by means of a writ of *coram nobis* under 28 U.S.C. § 1651, the so-called “All Writs Act.” ***United States v. Noske*, 235 F.3d 405, 406 (8th Cir. 2000) (holding that writs of *coram nobis* filed after an unsuccessful § 2255 motion are not allowed) ; see also *United States v. Davis*, 30 F. App’x 142 (4th Cir. 2002) (citing *Noske* for this proposition).**

IT IS, THEREFORE, ORDERED that Defendant’s motion for a writ of *coram nobis* is hereby **DENIED**.

Signed: March 19, 2008

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

